

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ANDREANO, STEPHEN CRAIG, and  
ANDREANO, CATHERINE ANN,

Appellants,

v.

J.P. MORGAN CHASE BANK, N.A.,

Appellee.

Case No. 3:15-cv-00047-MMD  
Bankr. Case No. BK-N-09-52781-GWZ  
Appeal Ref. No. 15-00001

ORDER

(Appellee's Motion to Dismiss Appeal –  
dkt. no. 4)

**I. SUMMARY**

This case involves a bankruptcy appeal. Appellee J.P. Morgan Chase Bank, N.A. ("Chase") moves to dismiss Appellants Stephen and Catherine Andreano's ("Debtors") appeal ("Motion") as untimely. (Dkt. no. 4.) For the reasons stated below, Chase's Motion is granted.

Chase also filed a supplement to its Motion to raise a new argument about the time period for Debtors to file their opening brief. (Dkt. no. 11 at 1-2.) Chase did not obtain leave of Court to supplement their Motion to assert a new argument. Chase's supplement (dkt. no. 11) and Debtors' response (dkt. no. 12) are procedurally improper and will be stricken from the record.

**II. BACKGROUND**

Since the Motion is limited to the timeliness of Debtors' appeal, the Court will briefly summarize the relevant facts.

1 In 2003, Debtors obtained a loan ("Loan") from Washington Mutual Bank  
2 ("WaMu") secured by a deed of trust. (Dkt. no. 4 at 2.) In 2008, after the Office of Thrift  
3 Supervision closed WaMu, Chase acquired the Loan from the Federal Deposit  
4 Insurance Corporation ("FDIC"). (*Id.*, Exh. B at 3.)

5 In August 2009, Debtors filed for Chapter 11 bankruptcy protection. (*Id.*) In  
6 September 2009, Chase timely filed a proof of claim ("POC"), which Chase  
7 subsequently amended. (*Id.*) In January 2012, Debtors filed an objection to Chase's  
8 POC ("Objection"). (*Id.*) In July 2014, Debtors moved for summary judgment in support  
9 of their Objection ("Debtors' Motion"). (*Id.*) In September 2014, Chase filed a  
10 countermotion for summary judgment ("Chase's Countermotion"). (*Id.*) Debtors' Motion  
11 and Chase's Countermotion essentially raised the same issue of Chase's standing to  
12 maintain and pursue its POC.

13 On November 19, 2014, the bankruptcy court held a hearing on the competing  
14 dispositive motions ("November 19 Hearing"). (*Id.* at 5.) At the conclusion of the  
15 argument, the bankruptcy court instructed Chase's counsel to prepare two orders, one  
16 order granting Chase's Countermotion and one overruling Debtors' Objection.<sup>1</sup> (Dkt.  
17 no. 8 at 2, ¶¶ 18-22.) The bankruptcy court further instructed Debtors' counsel to  
18 prepare an order denying Debtors' Motion. (*Id.*) On December 23, 2014, the  
19 bankruptcy court entered the order granting Chase's Countermotion ("December 23  
20 Order") and the Order overruling Debtors' Objection. (See dkt. no. 4, Exhs. A and B.)  
21 On January 29, 2015, the bankruptcy court entered the Order denying Debtors' Motion  
22 ("January 29 Order"). (Dkt. no. 8 at 3, ¶¶ 26-27.)

23 On January 22, 2014, thirty (30) days after entry of the December 23 Order and  
24 seven (7) days before entry of the January 29, 2014, Order, Debtors filed a notice of  
25 appeal. (Dkt. no. 4 at 3.) In that notice, Debtors identified the subject of the appeal as

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27 <sup>1</sup>LR 9021(a)(1) requires attorney for the prevailing party to prepare all proposed  
28 findings of fact, conclusions of law, judgments, and orders, unless otherwise ordered  
by the bankruptcy judge; LR 9021(a)(2) requires all proposed orders to accurately  
reflect the court's ruling.

1 the bankruptcy court's orders entered on December 23, 2014, granting Chase's  
2 Countermotion, overruling Debtors' Objection, and denying Debtors' Motion. (Dkt. no.  
3 2-1 at 3.) Chase now moves to dismiss the appeal, contending the notice of appeal  
4 was untimely filed. (Dkt. no. 4. at 3-4.)

### 5 **III. DISCUSSION**

6 Chase reasons that because the two separate orders the bankruptcy court  
7 entered on December 23, 2014, contained the final, appealable decisions on all three  
8 motions, they triggered the 14-day appeal period under Federal Rule of Bankruptcy  
9 Procedure 8002(a)(1). (*Id.*) Debtors counter that the January 29, 2014, Order was the  
10 final, appealable order, and Debtors simply filed their notice of appeal prematurely,  
11 rather than late, under Rule 8002(a)(2). (Dkt. no. 8 at 3.)

12 Rule 8002(a)(1) provides that "a notice of appeal must be filed with the  
13 bankruptcy clerk within fourteen (14) days after entry of the judgment, order, or decree  
14 being appealed." Fed. R. Bankr. P. 8002(a)(1). The Ninth Circuit has determined that  
15 the time provisions in Rule 8002 are to be strictly enforced, and untimely filing of the  
16 notice of appeal is jurisdictional. *In re Nucorp Energy, Inc.*, 812 F.2d 582, 584 (9th Cir.  
17 1987) (citing to *In re Souza*, 795 F.2d 855, 857 (9th Cir. 1986)).

18 At the outset, the Court notes Debtors' notice of appeal was untimely with  
19 respect to the bankruptcy court's decisions to grant Chase's Countermotion and to  
20 overrule Debtors' Objection. It is not disputed that the bankruptcy court entered  
21 separate final, appealable Orders on December 23, 2014, to dispose of both filings.  
22 These Orders started the 14-day appeal period, and Debtors failed to file the notice of  
23 appeal within the permitted period. Thus, the only remaining issue is whether the  
24 December 23, 2014, Order or the January 29, 2014, Order constituted the final,  
25 appealable order denying Debtors' Motion. If it is the former, then the notice of appeal  
26 as to Debtors' Motion was also untimely filed.

27 If a court files a more formal judgment after filing a final disposition, the latter  
28 judgment does not constitute a second final disposition or extend the appeal period. *In*

1 *re Slimick*, 928 F.2d 304, 307 (9th Cir. 1990). Accordingly, the Court must decide if the  
 2 December 23, 2014, Order is the final disposition of Debtors' Motion. The Ninth Circuit  
 3 has identified two factors to determine the finality of a disposition: (1) if the disposition  
 4 is a full adjudication of the issues at bar; and (2) if the disposition clearly evidences the  
 5 judge's intention that it be the court's final act in the matter. *In re Slimick*, 928 F.2d at  
 6 307.

7  
 8 **1. The December 23, 2104, Order is a full adjudication of the issues at bar.**

9 "A final decision is one that ends the litigation on the merits and leaves nothing  
 10 for the court to do but execute the judgment." *United States v. Lummi Indian Tribe*, 235  
 11 F.3d 443, 448 (9th Cir. 2000) (internal quotation marks and citation omitted). The Ninth  
 12 Circuit has recognized that "[while] no formal words of judgment are necessary to  
 13 convey finality, there must be *some* dispositive language sufficient to put the losing  
 14 party on notice that his *entire* action — and not just a particular motion or proceeding  
 15 within the action — is over and that his next step is to appeal." *In re Brown*, 484 F.3d  
 16 1116, 1121 (9th Cir. 2007) (internal citation omitted).

17 The December 23, 2014, Order decided Debtors' Motion on its merits. The only  
 18 disputed issue in the bankruptcy court was whether Chase had standing to enforce its  
 19 POC. Debtors advanced five reasons in their Motion for why Chase did not. (Dkt. no. 4  
 20 Exh. B at 4, ¶ 17.) In granting Chase's Countermotion in its entirety, the bankruptcy  
 21 court addressed, and rejected all five of Debtors' reasons. First, Debtors asserted that  
 22 WaMu sold the Loan to a third party and therefore did not own the Loan when Chase  
 23 acquired it from the FDIC. The bankruptcy court ruled that Debtors' assertion was  
 24 unsupported by any competent evidences. (*Id.* at 7, ¶ 8.) Second, Debtors contended  
 25 that Chase failed to prove that it acquired the Loan from the FDIC. The bankruptcy  
 26 court held that Chase amply demonstrated, and Debtors failed to rebut, that Chase  
 27 acquired the Loan from the FDIC. (*Id.* at ¶ 9.) Third, Debtors argued that Chase was  
 28 only a receiver, not a holder, of the Loan. The bankruptcy court ruled that Chase had

1 persuasively demonstrated that it was also the holder of the Loan. (*Id.* at ¶ 11.) Fourth,  
2 Debtors argued that the Loan was not a negotiable instrument. The bankruptcy court  
3 decided that since Debtors failed to present case law to the contrary, the Loan was a  
4 negotiable instrument. (*Id.* at ¶ 12.) Fifth, Debtors claimed that Chase was in wrongful  
5 possession of the Loan, and was not entitled to enforce the Loan. The bankruptcy  
6 court ruled that even if Chase was in wrongful possession of the Loan, Chase would  
7 still be entitled to enforce the Loan. (*Id.* at ¶ 16.) The December 23, 2014, Order thus  
8 denied Debtors' Motion on the merits.

9       The December 23, 2014, Order also contains dispositive language sufficient to  
10 put Debtors on notice that their action was over and the next step would be appeal. In  
11 the Order, the bankruptcy court concluded that "Debtors have failed to demonstrate  
12 the existence of any genuine issues of material fact that is at dispute to preclude  
13 summary judgment in favor of Chase." (*Id.* at ¶ 18). The bankruptcy court also found  
14 that "Debtors have failed to present evidence to rebut the prima facie evidentiary  
15 presumption in favor of Chase's [POC], and even if they had, Chase has demonstrated  
16 its right to maintain and pursue its [POC] beyond a preponderance of evidence." (*Id.* at  
17 ¶ 19.) This language plainly indicates that Debtors' arguments for summary judgment  
18 fail. The bankruptcy court's granting of Chase's Countermotion *in its entirety* also  
19 clearly indicates that Debtors' action was over. The only thing left for the bankruptcy  
20 court to do was to enforce its judgment, i.e. to allow Chase to pursue its POC as if  
21 Debtors' Objection had not been filed. (*Id.* at 10.)

22       Additionally, Debtors were on actual notice since the November 19, 2014,  
23 hearing. The bankruptcy court instructed Debtors' counsel to submit a proposed order  
24 that would accurately reflect its ruling. (Dkt. no. 8 at 2.) In other words, the bankruptcy  
25 court asked Debtors' counsel to memorialize his reasoning in denying their motion as  
26 stated during the Hearing. The bankruptcy court provided no reason (such as asking  
27 for additional briefing) for Debtors to doubt the finality of its ruling. Indeed, the January  
28 29, 2014, Order merely refers back to the November 19, 2014, hearing, and thus

1 provides no new reasoning for the appellate court to review the bankruptcy court's  
2 decision.

3 The December 23, 2014, Order, therefore, is the final disposition of Debtors'  
4 Motion. It resolved all the issues raised in Debtors' Motion. The lack of express  
5 language was irrelevant because, in granting Chase's Countermotion in its entirety,  
6 the bankruptcy court obviously and necessarily denied Debtors' Motion.<sup>2</sup>

7  
8 **2. The December 23, 2014, Order clearly evidences the bankruptcy court's intent that it be the court's final act in the matter.**

9 The Court next considers whether the bankruptcy court intended the December  
10 23, 2014, Order to be final. "Evidence of intent consists of the Order's content and the  
11 judge's and parties['] conduct." *In re Slimick*, 928 F.2d at 308. (internal citation  
12 omitted).

13 The *Slimick* court held that fully adjudicating the issues at bar on its face  
14 evidenced the judge's intention that his order to be final. *Id.* Because the December  
15 23, 2014, Order fully adjudicated the issues regarding Debtors' Motion, the Order on  
16 its face also evidences the bankruptcy judge's intention that it be final.

17 Further, the *Slimick* court found that the bankruptcy court intended its order to  
18 be final because it did not condition the order's finality on any contingency. *Id.* The  
19 *Slimick* court focused on the bankruptcy court's failure to set deadlines as to when it  
20 requested documents from both parties should be provided, and concluded that the  
21 bankruptcy court must have intended the order to be final. *Id.* The *Slimick* court  
22 reasoned that interpreting otherwise would reach the improbable conclusion that the  
23 bankruptcy court intended to render the order indefinitely interlocutory. *Id.* Similarly  
24 here, the bankruptcy court did not condition the finality of its ruling during the  
25 November 19, 2014, hearing or in the December 23, 2014, Order on any contingency.

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<sup>2</sup>The *Slimick* court found an order constituted a final disposition, even though  
28 the order did not expressly deny the debtor's claim and a related judgment was filed months later. *In re Slimick*, 928 F.2d at 306.

1 Nor did the bankruptcy court set deadlines requiring the parties' counsel to submit the  
2 proposed orders before a certain date. Therefore, the bankruptcy court must have  
3 intended its ruling during the November 19, 2014, hearing and in the December 23,  
4 2014, Order to be final.

5 Moreover, Debtors' actions also suggest that Debtors were aware of the  
6 bankruptcy court's intention. In their initial notice of appeal, Debtors stated the date of  
7 the order entered for denial of their Motion (as well as the other two motions) was  
8 December 23, 2014, referring to the December 23, 2104, Order. (Dkt. no. 2-1 at 3.)  
9 Only after Chase moved to dismiss the appeal on the ground of untimeliness, almost  
10 one month after Debtors' initial filing, did Debtors seek to amend their notice of appeal  
11 to add the January 29, 2015, Order. (Dkt. no. 7 at 2.)

12 In sum, the December 23, 2014, Order is the final and appealable order of the  
13 bankruptcy court's decision to deny Debtors' Motion. Debtors failed to file a notice of  
14 appeal within fourteen (14) days after entry of the December 23, 2014, Order. Debtors'  
15 notice of appeal, filed on January 22, 2015, was untimely. This appeal is therefore  
16 dismissed.


#### 17 **IV. CONCLUSION**

18 The Court notes that the parties made several arguments and cited to several  
19 cases not discussed above. The Court has reviewed these arguments and cases, and  
20 determined that they do not warrant discussions as they do not affect the outcome of  
21 the Motion.

22 It is therefore ordered that Chase's motion to dismiss the appeal (dkt. no. 4) is  
23 granted. It is further ordered that Chase's supplement (dkt. no. 11) and Debtors'  
24 response (dkt. no. 12) are stricken from the record.

25 The Clerk is directed to enter judgment in favor of Chase and close this case.

26 DATED THIS 22<sup>nd</sup> day of July 2015.

27   
28 MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE